

EVIDENCE CHECKLIST

the Protection of Industrial Property, “marks with reputation” as in EU legislation (EU Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks and Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trademark) and “famous” marks under the U.S. Lanham Act and other non EU jurisdictions. Each of them is indicated in the checklist as “WK”, “R” and “F” respectively. The checklist covers the above mentioned national trademarks for the specific countries mentioned therein (Albania, Austria, Belgium, Cyprus, France, Finland, Germany, Greece, Italy, Luxembourg, Poland, Portugal, Spain, Sweden, Switzerland, The Netherlands, Turkey, United Kingdom, USA) as well as Community Trademarks.

known or with reputation / famous for each jurisdiction are included. The degree of acceptance by the competent bodies and courts is indicated in a scale of 1 – 3 (1: necessary, 2: useful, 3: courts reject/are skeptical).

In the second part of the checklist, the relevant factors in determining whether a mark is well – known or with reputation / famous for each jurisdiction are included.

indicated for each jurisdiction covered, distinguishing between the different procedure categories: proceedings before the trademark office, main proceedings before courts, interim measures proceedings before courts and UDRP proceedings.

A. TYPES OF EVIDENCE		FAMOUS MARKS Evidence Template																																																	
Types/ Country		ALBANIA		BOSNIA & HERZEGOVINA		CROATIA		CYPRUS		DENMARK		FINLAND		FRANCE		GERMANY		GREECE		ITALY		MACEDONIA		MONTENEGRO		POLAND		PORTUGAL		ROMANIA		RUSSIAN FEDERATION		SERBIA		SPAIN		SWEDEN		SWITZERLAND		THE NETHERLANDS		TURKEY		UNITED KINGDOM		CTM			
		WK	F	WK	F	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	F	WK	R	WK	R	WK	R	WK	R	WK	F	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R				
Extracts from statement accounts showing international sales figures		3		3	3	3	3	2	2	2	2	2	2	2	2	1	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2	3		3	3	2	2	2	2	2	3	2	2	1	2	2	3	2	2		
Extracts from statement accounts showing national sales figures		1		1	1	2	2	2	2	1	1	2	2	2	2	2	1	2	1	2*	2	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	1	1	2	1	2	2	2	2	
Extracts from official books showing international advertising expenses		3		3	3	3	3	2	2	2	2	2	2	2	2	1	2	1	2	2	2	2	1	1	1	2	2	2	2	1	1	1	3		3	3	2	2	2	2	2	3	2	2	1	2	2	3	2	2	
Extracts from official books showing national advertising expenses		1		1	1	2	2	2	2	1	1	2	2	2	2	1	1	2	1	2*	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	1	1	2	1	2	2	2	2		
Sample invoices internationally		3		3	3	3	3	3	3	2	2	2	2	2	2	3	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2		
Sample invoices nationally		2		2	2	2	2	3	3	2	2	2	2	2	2	2	2	2	1	2*	2	2	1	2	2	2	1	1	2	2	2	2	1	1	1	1	1	2	2	2	2	1	1	2	1	2	2	2	2		
TV/Radio/Online/Printed adverts internationally		2 or 3		2 or 3	2 or 3	3	3	2	2	2	2	2	2	2	1	3	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2		
TV/Radio/Online/Printed adverts nationally		2		2	2	2	2	2	2	2	2	2	2	2	1	2	1	2*	2	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	1	1	2	1	2	2	2		
Press (articles, interviews etc) internationally		2 or 3		2 or 3	2 or 3	3	3	2	2	2	2	2	2	2	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Press (articles, interviews etc) nationally		2		2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Other adverts (trade fairs, fashion shows) internationally		2 or 3		2 or 3	2 or 3	3	3	2	2	2	2	2	2	2	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Other adverts (trade fairs, fashion shows) nationally		2		2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Advertising material (posters, objects bearing the trademark etc)		3		2	2	2	2	2	2	2	2	1	1	2	2	2	2	2	2	2*	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Points of sale internationally		3		3	3	3	3	2	2	2	2	2	2	2	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Points of sale nationally		2		2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2*	2	2	2	2	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Survey evidence internationally		2 or 3		3	3	3	3	2	2	2	2	2	2	2	3	3	3	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Survey evidence nationally		1		2	2	2	2	2	2	1 or 2	1 or 2	1	1	2	2	2*	1*	3	3	2	2	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Other local registrations		2		2	2	2	2	2	2	2	2	2	2	/	/	2	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Foreign registrations		2 or 3		2 or 3	2 or 3	3	3	2	2	3	3	2	2	/	/	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Local enforcement		2		2	2	2	2	3	3	3	3	2	2	?	?	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Foreign enforcement		2		2	2	3	3	3	3	3	3	2	2	?	?	2	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Judicial/UDRP precedents on famous character of the mark		2		2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2		
Brand value		2		2	2	2	2	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Owner's website		2		2	2	2	2	2	2	3	3	2	2	2	2	3	3	3	3	2	2	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Industrial awards		2		2	2	2	2	2	2	2	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Wiki/Google search results		2		2	2	2	2	2	2	2	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Other internet evidence		2		2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
Affidavits / Sworn statements		2		2	2	2	2	2	2	2*	2*	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Oral statements		2		2	2	3	3	2	2	3	3	1	1	?	?	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Expert witness		2		2	2	3	3	2	2	1 or 3*	1 or 3*	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Other evidence (please indicate)																																																			
Remarks		In Albania there is no distinction between WK and R marks. Even though the law contains both terms (WK and F), it does not grant them a different protection. From a careful consideration of the law, it can be easily concluded that both enjoy an equal protection.	In BiH the Law recognizes WK and F marks and both enjoy an equal protection.	Well known character/Reputation is determined based on all circumstances of each specific case, which is why all types of evidence can be considered "useful". However, all types of evidence must refer to the territory of the Republic of Croatia.	Please note that Danish law does not contain any statutory "ranking" of evidence and the specific assessment (and balancing) of conflicting evidence is left to the presiding judge. As a final note, we would like to point out that the courts in Danish courts' judgements are usually very short and that it is therefore difficult to deduce any "dead letter" principles. Nonetheless, on the basis of Danish jurisprudence, certain established principles may be extracted.	In Finland, the same requirements apply to WK and R marks. In principle, nearly anything can be used and accepted as evidence. In principle the courts do not accept written statements, but require that the persons are heard as witnesses.	*Survey evidence nationally is not needed, especially the advertising expenses and sales figures leave no doubt about the reputation of the trademark. *Other evidence: the description of the trademark in german speaking dictionaries can be a useful evidence.	*It should be noted that it is not common to rely on these kinds of evidence to establish the "well-known" character of a mark, for the very reason that in Italy "well-known marks" under Article 6bis of the Paris Convention for the Protection of Industrial Property are protected without local registration or use, provided that the mark's notoriety does extend to Italy or a significant part thereof.	We would like to highlight the fact that Montenegrin IPO was opened on May 28, 2008 so there is no a lot of practice on which we can rely on. All answers are given in accordance with provisions of the Trademark Law, and in accordance with the current practice, which is very poor. Therefore, it is possible that in the future some of the useful evidences will become useful.	In Poland it is difficult to assume which evidence is necessary and which is "just" useful. Reputation and well-known character of the mark is always assessed bearing in mind all circumstances of the case. Sometimes it depends on the court order which evidence will be requested.	In Portugal, the evidence to support the claim for Well Known marks is treated in a similar way to marks with Reputation.	Russian law provides only for the procedure of recognition of a trademark as well-known. This procedure is carried out by Rospatent which delivers the decision at its discretion without hearings and involvement of the interested party. This administrative procedure results in well-known trademark registration. The Rospatent's refusal in recognition of a trademark as well-known may be appealed before a court.	The Serbian authorities would require that we prove famous-well known status on the domestic market. It may help if similar evidences required for domestic market are also obtained for the markets close to Serbian, such as markets of the neighboring countries.	It is useful for us to clarify what local and foreign enforcement implies. ** Chamber of Commerce certificates are useful to assess the well known of a trademark (being issued by the Community Trademark no. 1 of Alicante dated January 28, 2013, Puig vs. Equivalenza).	Swedish courts recognize a principle of free evidence. Thus, although the court may be more or less skeptical to any single piece of evidence (in particular a plaintiffs own unverified statements), almost anything of relevance is "useful" evidence. However, in cases of well known marks (notorious marks) survey evidence plays a key part. More notably, there are a number of cases where a mark is claimed to be well known that is lost on lack of evidence rather than on the merits of evidence submitted.	Facts, which are well known by court must not be proven. The broader protection of well known trademarks cannot be claimed within opposition proceedings.	UK Tribunals are very skeptical of survey evidence. It is very difficult to conduct a survey in a manner such that the survey evidence will be admissible. In particular, the survey may be found to be of no value if the persons selected come from too limited a class of persons or if leading questions were asked.	The evidence requirements for WK and R trade marks are essentially the same and the two concepts are difficult to tell apart. OHIM's Manual says that in practical terms, the threshold for establishing whether a trade mark is well-known or enjoys reputation will usually be the same. If statistically valid, market surveys are considered by OHIM as best and most convincing evidence of reputation.																																	

Degree of court acceptance:
1: necessary
2: useful
3: courts reject/are skeptical

A. TYPES OF EVIDENCE		FAMOUS MARKS Evidence Template																																																	
Types/ Country		ALBANIA		BOSNIA & HERZEGOVINA		CROATIA		CYPRUS		DENMARK		FINLAND		FRANCE		GERMANY		GREECE		ITALY		MACEDONIA		MONTENEGRO		POLAND		PORTUGAL		ROMANIA		RUSSIAN FEDERATION		SERBIA		SPAIN		SWEDEN		SWITZERLAND		THE NETHERLANDS		TURKEY		UNITED KINGDOM		CTM			
		WK	F	WK	F	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	R	WK	F	WK	F	WK	R	WK	R	WK	R	WK	F	WK	F	WK	R	WK	R	WK	R	WK	F	WK	R	WK	R	WK	R
With Thanks and Credits to our Contributors:		Ignacio Lazaro of Petosevic						Roddy Kyriakides of Emilianides & Kyriakides Law Office		Jens Jakob Bugge of Horten Law Firm						Sandra Sophia Redeker of Noerr LLP & Tobias Unterguggenberger of Allianz SE		Marina Perraki of Tsibanoulis & Partners Law Firm				Aneta Indovska of Zivko Mijatovic & Partners (MK)		Ewa Skrzydlo-Tefelska of Soltysinski Kawecki & Szezak (SKS Legal)		Ewa Skrzydlo-Tefelska of Soltysinski Kawecki & Szezak (SKS Legal)		Manuel Moniz Pereira of Gastão Cunha Ferreira		Denisa Markusev of Rominvent		Natalia Gulyaeva of Hogan Lovells (CIS)						Fredrik Persson of Advokatfirman NORDIA Göteborg Kommanditbolag		Meyerlustenberger Lachenal Rechtsanwälte		Gregor Vos of Klos Morel Vos & Schaap		Ugur Aktekin of Mehmet Gün & Partners		Louise Gellman of Nabarro LLP		Imogen Fowler and Natalia Gulyaeva of Hogan Lovells			

B. RELEVANT FACTORS

Factors/ Country	ALBANIA	BOSNIA & HERZEGOVINA	CROATIA	CYPRUS	DENMARK	FINLAND	FRANCE	GERMANY	GREECE	ITALY	MACEDONIA	MONTENEGRO	POLAND	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SPAIN	SWEDEN	SWITZERLAND	THE NETHERLANDS	TURKEY	UNITED KINGDOM	CTM
Sales Duration	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sales Volume	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sales Geographical extent	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advertising / Promotion Duration	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advertising / Promotion Volume	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Advertising / Promotion Geographical extent	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Any other use	✓		✓	✓		✓	✓		✓			✓		✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓	✓
Inherent distinctiveness	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓ (if applicable)	✓	✓	✓	✓	✓	✓	✓	✓
Acquired distinctiveness	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓ (if applicable)	✓	✓	✓	✓	✓	✓	✓	✓
Degree of recognition	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Degree of connection of quality of goods/services to the mark	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Degree of exclusivity of the mark	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Remarks				✓																				

* Turnovers to support sales volume.

C. AUTHENTICATION

Requirements/ Country	ALBANIA	BOSNIA & HERZEGOVINA	CROATIA	CYPRUS	DENMARK	FINLAND	FRANCE	GERMANY	GREECE	ITALY	MACEDONIA	MONTENEGRO	POLAND	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SPAIN	SWEDEN	SWITZERLAND	THE NETHERLANDS	TURKEY	UNITED KINGDOM	CTM
Originals / Certified copies	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3	(2, 3 may request)	1, 2, 3	1, 2, 3	1, 2		1, 2, 3, 4	1, 2, 3	1, 2, 3	1, 2, 3	2, 3, 4	1, 2, 3 (if applicable)		1, 2, 3			2, 3	2, 3		2
Photocopies			1, 2, 3*		1, 2, 3	1, 2, 3, 4	1, 2, 3	2*, 3	3	1, 2, 3, 4	2, 2, 2, 2			1, 2, 3	1	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3, 4	1, 2*, 3, 4	2, 3	1	1, 2, 3, 4	1
Notarisation	1, 2, 3	2, 3	2, 3	1, 2, 3	1, 2, 3		/	1, 2, 3	1, 2		1, 2, 3, 4	1, 2, 3		1, 2, 3	2, 3, 4	1, 2, 3	1, 2, 3	2, 3		2, 3	2, 3	2, 3		
Legalisation / Apostille	2, 3	2, 3	2, 3	1, 2, 3	1, 2, 3		/	1, 2, 3	1, 2		*d	1, 2, 3		1, 2, 3	2, 3, 4	1, 2, 3		2, 3		2, 3	2, 3	2, 3		
Translation	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3*	(2, 3 may request)	1, 2, 3	-3	3	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3		1	(1*), 2, 3, 4	1, 2, 3	1, 2, 3	1, 2, 3		1, 2, 3, 4	1, 2	1, 2, 3	1, 2, 3, 4	1, 2
Official Translation	2, 3	1, 2, 3	2, 3	1, 2, 3	1, 2, 3*		/	1, 2, 3	1, 2		1, 2, 3, 4	1, 2, 3	1, 2, 3	1, 2, 3	2, 3, 4	1, 2, 3 (if applicable)	1, 2, 3	2, 3		(1, 2, 3, 4)	2	1, 2, 3		
Dates	1, 2, 3	Dates	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3, 4	1, 2, 3	1, 2, 3	1, 2, 3		1, 2, 3, 4	1, 2, 3	1, 2, 3	1, 2, 3	2, 3, 4	1, 2, 3	1, 2, 3	1, 2, 3	1, 2, 3, 4	1, 2, 3, 4	1, 2	1, 2, 3	1, 2, 3, 4	1, 2
Remarks			* Only advertising material can be submitted as photocopies. Registration not relevant for UDRP proceedings; the complainant must be based on a registered trademark.		Official translation may be required, if a party objects to an in-house translation.		Notarisation, legalisation, official translations are not mandatory.	* Photocopies: if objections against the conformity of the copy and the original arise, other evidence is needed.			a) We have noticed that: PO accepts photocopies, but if any doubts arise, they may ask for the original document or certified copy. b) No domain dispute resolution case has been notified, neither with UDRP application, nor by the domain registry authority in Macedonia. c) If documents are notarized, legalisation / apostille is not required.					UDRP procedure is not available in Russian Federation, however, the courts in some cases have applied the provisions of Uniform Domain Name Dispute Resolution Policy.			The Spanish Patent and Trademark Office and the Courts do not require providing original or notarized documents, but is highly advisable to present the original or notarized ones to avoid the complaint of the counterpart. Also, the language of the process is Spanish, so it is highly recommended to attach the documents in that language, in the event of passing the documents in other language the other part can ask for the translation into Spanish.		Swedish courts recognise a principle of free evidence valuation. Photocopies are sufficient, unless someone disputes that the copy is authentic. You may submit original or even notarized versions, but if they add nothing unless there is some specific reason to do so. Also, as regards translations, there are no formal requirements on translations as long as the court can understand the documents submitted. Thus, for example, a document in Swedish or in the Nordic languages (save for Finnish) or English is usually understood.			No. 2: for "Courts on main proceedings" we refer to General Court (GC) in Luxembourg which hears appeals against OHIM's decisions. No. 3: "Courts on interim measures" has not been considered as interim measure are rarely applied for before the GC.

Proceedings categories
 1. Trademark Office
 2. Courts on main proceedings
 3. Courts on interim measures
 4. UDRP